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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 SEAN ROBBINS,) NO. CV 17-0246-AG(E)
12 Plaintiff,)
13 v.) ORDER DISMISSING FIRST AMENDED
14 LT. J. CORTEZ, et al.,) COMPLAINT WITH LEAVE TO AMEND
15 Defendants.)
16 _____)
17

18 For the reasons discussed below, the First Amended Complaint is
19 dismissed with leave to amend. See 28 U.S.C. §§ 1915(e)(2)(B),
20 1915A(b)(2).
21

22 PROCEEDINGS
23

24 Plaintiff, a state prisoner proceeding in forma pauperis, brings
25 this civil rights action pursuant to 42 U.S.C. section 1983 against
26 prison officials at the California Men's Colony ("CMC"). The original
27 Complaint named as Defendants: (1) CMC Warden E. Valenzuela;
28 (2) Correctional Lieutenant J. Cortez; (3) Correctional Officers C.

1 Sandoval, R. Day, J. Ramirez, J. Busby, E. Clemons; and (4) fictitious
2 "Doe" Defendants. The original Complaint sued Defendants in their
3 individual capacities.
4

5 On May 19, 2017, the Court issued an "Order Dismissing Complaint
6 With Leave to Amend." On June 22, 2017, Plaintiff filed a First
7 Amended Complaint. The First Amended Complaint adds the following
8 Defendants: (1) Correctional Officer R. Castillo; (2) Registered Nurse
9 Jackie Groenveld; (3) Chief Physician and Surgeon Dr. C. Barber;
10 (4) Dr. Duncan; and (5) Chief Medical Executive Dr. D. Ralston. The
11 First Amended Complaint names Defendants Barber, Duncan and Ralston in
12 their individual capacities only. Plaintiff sues the remaining
13 Defendants in both their individual capacities and their official
14 capacities.
15

16 SUMMARY OF PLAINTIFF'S ALLEGATIONS 17

18 I. The Original Complaint 19

20 In the original Complaint, Plaintiff alleged that, on
21 November 18, 2013, Plaintiff assertedly was issued a Rules Violation
22 Report charging Plaintiff with delaying a peace officer in the
23 performance of duties (Complaint, p. 5). Plaintiff asserted Eighth
24 Amendment claims arising out of events allegedly occurring during an
25 ensuing December 20, 2013 administrative hearing (id.). Defendant
26 Cortez reportedly presided over this hearing as the Senior Hearing
27 Officer (id.).
28 ///

1 During the hearing, Plaintiff allegedly began to feel pain from
2 sitting handcuffed in a chair and assertedly adjusted himself in an
3 attempt to become more comfortable (id., p. 11). Defendant Sandoval
4 allegedly placed a hand on Plaintiff's shoulders and whispered, "If
5 you move one more time, I'll take your fucking ass to the ground"
6 (id.).
7

8 When Defendant Cortez allegedly inquired whether Plaintiff was
9 read to proceed, Plaintiff assertedly requested permission to return
10 to Plaintiff's cell to retrieve some allegedly pertinent documents
11 (id.). Cortez reportedly denied the request, saying, "You should have
12 brought those things with you." Plaintiff allegedly responded that
13 the escorting officers, Defendants Sandoval and Day, assertedly had
14 not allowed Plaintiff to retrieve the papers from his cell (id.).
15 Cortez allegedly said, "I've seen your name on numerous 602's (inmate
16 grievance) [sic], you're a litigator, this will teach you not to file
17 so many 602's, so on that basis I will deny that request" (id.).
18

19 Plaintiff allegedly again adjusted himself in his chair because
20 of pain, and assertedly told Cortez, "You are violating my due process
21 rights and I'm going to 602 you with a staff misconduct complaint"
22 (id., p. 12). Defendant Cortez then allegedly said to his officers,
23 "Restrain him" (id.).
24

25 Defendants Sandoval and Day allegedly grabbed Plaintiff, and one
26 of them assertedly ordered a "Code One" (id.). Defendant Busby
27 allegedly responded to the "Code One" and ordered Plaintiff placed in
28 leg restraints (id.). Defendant Clemons allegedly stepped on the leg

1 restraints after the restraints had been secured tightly, assertedly
2 inflicting excruciating pain on Plaintiff (id.). Clemons allegedly
3 twisted Plaintiff's wrists upward in a reverse wrist lock position to
4 the point "where it was unbareable [sic]" (id.).
5

6 After Plaintiff allegedly exited the hearing office to be
7 returned to his cell, Defendant Day assertedly held Plaintiff in a
8 "tight reverse wrist lock," allegedly twisting Plaintiff's right
9 middle finger and telling Plaintiff, "If you even move in the
10 slightest, I'll take your ass down" (id.). Day allegedly applied more
11 pressure until Plaintiff assertedly yelled out in pain (id.). Day
12 allegedly continued to apply pressure to Plaintiff's finger until the
13 finger reportedly "snapped" (id.). When Plaintiff assertedly flinched
14 and yelled out in pain, Day allegedly yelled, "He's trying to grab
15 me!" (id., p. 13). Defendants Day, Sandoval, Ramirez, Clemons, Busby
16 and "approximately one to five unknown officers" named as "Doe"
17 Defendants then allegedly tackled Plaintiff (id.). These Defendants
18 allegedly kicked and beat Plaintiff, assertedly punching Plaintiff in
19 the face, torso and extremities (id.). Defendant Day allegedly choked
20 Plaintiff until Plaintiff was unable to breathe (id.). During this
21 time, Plaintiff allegedly heard and felt his neck "pop," and Plaintiff
22 assertedly experienced severe consequent pain (id.). Throughout the
23 alleged beating and choking, Plaintiff reportedly was still wearing
24 leg and arm restraints (id.).
25

26 Plaintiff allegedly suffered injuries to his neck, ribs, chest,
27 wrists and ankles, as well as emotional and psychological injuries
28 (id., p. 14). Medical personnel identified as "Doe" Defendants

1 allegedly did not provide immediate medical care to Plaintiff,
2 purportedly by failing to summon Plaintiff to receive those services
3 despite supposedly having knowledge of Plaintiff's need for medical
4 care (id.).

5
6 The original Complaint contained two claims for relief. Claim
7 One asserted that Defendants subjected Plaintiff to "cruel and unusual
8 punishment by means of unnecessary use of force without due process,"
9 assertedly in violation of the First, Eighth and Fourteenth Amendments
10 (id., p. 5). Claim Two alleged that various "Doe" Defendants
11 assertedly denied Plaintiff medical care by purportedly exhibiting
12 deliberate indifference to an allegedly serious medical need (id., p.
13 14). Plaintiff sought declaratory relief, compensatory and punitive
14 damages, the costs of suit and attorney's fees (Complaint, p. 6).

15
16 **II. The First Amended Complaint**

17
18 The First Amended Complaint is not a model of clarity. The
19 pleading contains a due process claim (Claim I) and an Eighth
20 Amendment claim (Claim II), but also contains what appear to be
21 allegations of retaliation.

22
23 Plaintiff alleges that he was outside in the yard when Defendant
24 Sandoval assertedly told Plaintiff that Sandoval and Plaintiff were
25 going to a disciplinary hearing (First Amended Complaint, p. 7).
26 Plaintiff allegedly asked Sandoval if Plaintiff could stop at his cell
27 to retrieve documents pertinent to Plaintiff's defense, including
28 witness contact information and statements from other correctional

1 officers who allegedly witnessed the event giving rise to the
2 disciplinary hearing (id.). Sandoval allegedly said yes and cuffed
3 Plaintiff's hands behind Plaintiff's back (id., pp. 7, 12).
4

5 However, Sandoval allegedly lied and did not take Plaintiff back
6 to Plaintiff's cell prior to the disciplinary hearing (id., p. 12).
7 Plaintiff asserts that Sandoval and his co-workers allegedly retaliate
8 against inmates like Petitioner "who have documented everything, kept
9 records, and [sic] appeal policies and procedures" (id.).
10

11 The hearing officer, Defendant Cortez, allegedly denied
12 Plaintiff's request to retrieve the documents from Plaintiff's cell
13 (id.). Defendants Sandoval and Cortez allegedly acted as part of a
14 larger group of correctional officials who assertedly confine inmates
15 in administrative segregation without a fair hearing on "bogus"
16 charges of "delaying a peace officer in the performance of his duties"
17 (id., pp. 12-13).
18

19 Plaintiff assertedly asked to be taken back to the yard because
20 he allegedly did not want to participate in a purportedly
21 unconstitutional "mock" hearing (id., p. 13). Defendants Sandoval and
22 Cortez allegedly refused this request (id.). Plaintiff, still
23 allegedly handcuffed behind his back, assertedly said he would not
24 respond to any of the hearing proceedings (id.).
25

26 Although Plaintiff purportedly posed no threat, Defendant
27 Sandoval allegedly then became violent, reportedly pushing down on
28 Plaintiff's shoulders and shoving Plaintiff against the back of the

1 chair (id., p. 14). Cortez allegedly told Sandoval to restrain
2 Plaintiff (id.). Sandoval allegedly called for backup (id.).
3

4 Several guards allegedly responded, including Defendants Day,
5 Clemons, Ramirez, Castillo and Busby (id., pp 14-15). A correctional
6 officer with an "M.I.A." neck tattoo threatened to "stomp [Plaintiff]
7 out" if Plaintiff tried anything (id., pp. 14-15). Plaintiff
8 allegedly told this guard to stop trying to put Plaintiff's right hand
9 in a wrist lock because Plaintiff's middle finger purportedly was
10 broken (id., p. 15).
11

12 Defendants Cortez and Sandoval allegedly issued a "code 1
13 emergency, officer in trouble" (id.). A "MOB" of correctional
14 officials allegedly attacked Plaintiff, grabbing, pushing, twisting,
15 hitting and shoving Plaintiff (id.). Sandoval allegedly twisted
16 Plaintiff's arms to the breaking point (id.). Although allegedly
17 fearing for his life, Plaintiff assertedly remained calm and did not
18 resist (id.). During the incident, Plaintiff's arms allegedly were
19 handcuffed behind his back (id., pp. 15-16). Defendant Cortez
20 allegedly watched while the officers "brutally attacked" Plaintiff
21 (id.).
22

23 Defendant Busby allegedly ordered Plaintiff to be placed in leg
24 shackles (id.). Defendant Clemons allegedly attached the leg shackles
25 (id.). Defendant Clemons reportedly complied with Plaintiff's request
26 to remove Clemons' foot from the chain, which assertedly was pulling
27 down on both shackles and injuring Plaintiff's ankles (id.).
28 Defendant Day assertedly kept trying to twist Plaintiff's right wrist

1 and fingers, although Day allegedly knew Plaintiff had a splint on
2 Plaintiff's broken finger (id.).

3
4 Defendant Busby and other unidentified officers allegedly took
5 Plaintiff back to his cell (id., p. 17). Plaintiff allegedly
6 overheard Busby coaching all of the officers involved in the incident
7 regarding what to write in incident reports, purportedly as part of a
8 conspiracy by a "retaliatory gang" of administrative segregation
9 officers (id.).

10
11 On the way back to Plaintiff's cell, Defendant Day allegedly
12 violently moved Plaintiff's wrist to an uncomfortable position (id.).
13 When Plaintiff allegedly asked Day to stop, saying Day was hurting
14 Plaintiff, Day laughed and began working Plaintiff's hand and wrist
15 "to and fro" (id., pp. 18-19). Day allegedly grabbed Plaintiff's
16 splinted finger (id., p. 19). Plaintiff allegedly felt a "pop" and
17 screamed that Day was breaking Plaintiff's finger (id.). Day
18 allegedly yelled "he's grabbing me, he's grabbing me," which
19 purportedly was "nearly impossible" because Plaintiff was handcuffed
20 behind his back with officers holding Plaintiff's arms (id.).
21 Defendant Busby allegedly watched this purported incident and did
22 nothing (id.). Day allegedly shoved Plaintiff into the side of the
23 hallway, and the officers and Plaintiff purportedly "careen[ed] down
24 the hallway" and fell down (id.). Someone allegedly called for help
25 (id.).

26
27 The officers allegedly kicked and hit Plaintiff while Plaintiff
28 assertedly lay on the ground, cuffed and shackled (id., p. 20).

1 Officers allegedly punched Plaintiff and stood on Plaintiff's head
2 (id., p. 21). Defendant Ramirez allegedly stepped on Plaintiff's neck
3 with his or her full weight (id., p. 20). An unidentified officer
4 purportedly took hold of Plaintiff's leg chains so that Plaintiff's
5 legs assertedly were five feet in the air (id.). Plaintiff allegedly
6 heard a "crunching, popping" noise in his neck (id.). Plaintiff's
7 neck and finger assertedly are now permanently damaged (id.).
8

9 Plaintiff allegedly woke the next morning in so much pain that he
10 reportedly could not even sit up (id., p. 21). Plaintiff assertedly
11 asked an unidentified nurse for help but the nurse allegedly only gave
12 Plaintiff medical request slips, which Plaintiff assertedly filled out
13 (id.). Unidentified guards allegedly so intimidated Defendant
14 Groenveld that she purportedly tried to refuse Plaintiff access to
15 medical treatment (id.). Unidentified prison officials assertedly
16 deprived Plaintiff of emergency medical treatment, although they
17 reportedly knew the guards allegedly had beaten Plaintiff (id.).
18

19 On January 1, 2014, Defendant Duncan allegedly examined
20 Plaintiff's injuries and ordered x-rays of Plaintiff's finger, neck
21 and back (id., p. 22). However, Duncan allegedly refused to provide
22 Plaintiff any pain medication (id.). Plaintiff allegedly thereafter
23 received treatment from other doctors (id.). Defendants Barber and
24 Ralston allegedly denied Plaintiff's grievance (id.). Upon
25 Plaintiff's transfer to a different prison, prison doctors reportedly
26 approved surgery on Plaintiff's hand (id.).
27
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1 Defendants Valenzuela, Cortez and Busby allegedly acted pursuant
2 to a purported practice and policy of preventing inmates from
3 defending themselves at disciplinary hearings (id., p. 24). These
4 three Defendants allegedly are aware of due process violations and
5 order their subordinates to inflict suffering on inmates (id., pp. 24-
6 25).

7
8 Plaintiff seeks declaratory and injunctive relief and
9 compensatory and punitive damages (id., p. 26).

10 11 DISCUSSION

12
13 The Court must construe Plaintiff's official capacity claims
14 against state correctional officials and state medical personnel as
15 claims against the State of California. See Kentucky v. Graham, 473
16 U.S. 159, 165-66 (1985). "[I]n the absence of consent a suit in which
17 the State or one of its agencies or departments is named as the
18 defendant is proscribed by the Eleventh Amendment. This
19 jurisdictional bar applies regardless of the nature of the relief
20 sought." Pennhurst State School & Hospital v. Halderman, 465 U.S. 89,
21 100 (1984); see Atascadero State Hosp. v. Scanlon, 473 U.S. 234
22 (1985); Confederated Tribes & Bands of Yakama Indian Nation v. Locke,
23 176 F.3d 467, 469 (9th Cir. 1999). Section 1983 does not abrogate
24 Eleventh Amendment immunity. See Quern v. Jordan, 440 U.S. 332,
25 344-45 (1979). California has not waived its Eleventh Amendment
26 immunity with respect to section 1983 claims. Brown v. Calif. Dep't
27 of Corrections, 554 F.3d 747, 752 (9th Cir. 2009); Dittman v. State of
28 California, 191 F.3d 1020, 1025 (9th Cir. 1999), cert. denied, 530

1 U.S. 1261 (2000). Accordingly, the Eleventh Amendment bars
2 Plaintiff's official capacity claims. See Will v. Michigan Department
3 of State Police, 491 U.S. 58, 71 (1989); Romano v. Bible, 169 F.3d
4 1182, 1185 (9th Cir.), cert. denied, 528 U.S. 816 (1999); Bair v.
5 Krug, 853 F.2d 672, 675-76 (9th Cir. 1998).

6
7 As the Court previously advised, Plaintiff may not sue the Warden
8 or any other supervisor under section 1983 on a theory of respondeat
9 superior. See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009)
10 ("Government officials may not be held liable for the unconstitutional
11 conduct of their subordinates on a theory of *respondeat superior*"). A
12 supervisor "is only liable for his or her own misconduct," and is not
13 "accountable for the misdeeds of [his or her] agents." Id. at 677.
14 Mere knowledge of a subordinate's alleged misconduct is insufficient.
15 Id.

16
17 A supervisor may be held liable in his or her individual capacity
18 "for [his or her] own culpable action or inaction in the training,
19 supervision or control of [his or her] subordinates." Watkins v. City
20 of Oakland, Cal., 145 F.3d 1087, 1093 (9th Cir. 1998) (quoting Larez
21 v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991)). To state
22 a claim against any individual defendant, a plaintiff must allege
23 facts showing that the individual defendant participated in or
24 directed the alleged violation, or knew of the violation and failed to
25 act to prevent it. See Barren v. Harrington, 152 F.3d 1193, 1194 (9th
26 Cir. 1998), cert. denied, 525 U.S. 1154 (1999) ("A plaintiff must
27 allege facts, not simply conclusions, that show that an individual was
28 personally involved in the deprivation of his civil rights.").

1 Plaintiff's conclusory allegations against Warden Valenzuela do
2 not suffice under these standards. See Ashcroft v. Iqbal, 556 U.S. at
3 678, 686 (plaintiff must allege more than an "unadorned, the-
4 defendant-unlawfully-harmed me accusation"; a pleading that "offers
5 labels and conclusions or a formulaic recitation of the elements of a
6 cause of action will not do") (citations and quotations omitted).
7

8 As the Court previously advised Plaintiff, prison officials can
9 violate the Constitution with respect to the medical treatment of a
10 prisoner only if they are "deliberately indifferent" to an inmate's
11 serious medical needs. See Farmer v. Brennan, 511 U.S. 825, 834
12 (1994); Estelle v. Gamble, 429 U.S. 97, 104 (1976). To be liable for
13 "deliberate indifference," a jail official must "both be aware of
14 facts from which the inference could be drawn that a substantial risk
15 of serious harm exists, and he must also draw the inference." Farmer
16 v. Brennan, 511 U.S. at 837. "[A]n official's failure to alleviate a
17 significant risk that he should have perceived but did not, while no
18 cause for commendation, cannot . . . be condemned as the infliction of
19 punishment." Id. at 838. Allegations of negligence do not suffice.
20 Estelle v. Gamble, 429 U.S. at 105-06; Lopez v. Smith, 203 F.3d 1122,
21 1131 (9th Cir. 2000) (en banc). Thus, inadequate treatment due to
22 accident, mistake, inadvertence, or even gross negligence does not
23 amount to a constitutional violation. Estelle v. Gamble, 429 U.S. at
24 105-06; Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004). "[A]n
25 official's failure to alleviate a significant risk that he should have
26 perceived but did not, while no cause for commendation, cannot . . .
27 be condemned as the infliction of punishment." Farmer v. Brennan, 511
28 U.S. at 838.

1 Plaintiff's Eighth Amendment claims against Defendants Barber and
2 Ralston are unclear. Plaintiff alleges only that these Defendants
3 denied Petitioner's grievance, but Plaintiff does not allege the
4 contents of the grievance or how the alleged denial of a grievance
5 constituted deliberate indifference to any serious medical need of
6 Plaintiff. Also unclear is Plaintiff's claim against Defendant
7 Groenveld. Plaintiff generally alleges that Groenveld denied
8 Plaintiff access to medical treatment, but does not allege specific
9 facts showing Groenveld's alleged deliberate indifference to any
10 serious medical need of Plaintiff. Plaintiff's conclusory allegations
11 are insufficient. See Ashcroft v. Iqbal, 556 U.S. at 678, 686 (2009);
12 Shelton v. Chorley, 487 Fed. App'x 388, 389 (9th Cir. 2012)
13 (conclusory allegations of deliberate indifference to medical needs
14 insufficient).

15
16 Although the First Amended Complaint does not contain any express
17 claim of alleged retaliation, some of Plaintiff's allegations suggest
18 Plaintiff may be attempting to assert a retaliation claim.
19 Correctional officials may not retaliate against inmates who exercise
20 their First Amendment rights. See Rhodes v. Robinson, 408 F.3d 559,
21 567-68 (9th Cir. 2005); Hines v. Gomez, 108 F.3d 265, 269 (9th Cir.
22 1997), cert. denied, 524 U.S. 936 (1998) (prisoners may base
23 retaliation claims "on harms that would not raise due process
24 concerns"). "Within the prison context, a viable claim of First
25 Amendment retaliation entails five basic elements: (1) An assertion
26 that a state actor took some adverse action against an inmate
27 (2) because of (3) that prisoner's protected conduct, and that such
28 action (4) chilled the inmate's exercise of his First Amendment

1 rights, and (5) the action did not reasonably advance a legitimate
2 correctional goal." Rhodes v. Robinson, 408 F.3d at 567-68 (citations
3 and footnote omitted). Plaintiff's confused and conclusory
4 allegations of alleged retaliation are insufficient to state a
5 cognizable retaliation claim. See Nichols v. Medina, 649 Fed. App'x
6 493 (2016) (affirming dismissal of conclusory retaliation claim); see
7 also Ashcroft v. Iqbal, 556 U.S. at 678.

8
9 To the extent Plaintiff attempts to assert the rights of other
10 inmates, Plaintiff may not do so in this action. A pro se plaintiff
11 may not represent anyone other than himself or herself. See Campbell
12 v. Burt, 141 F.3d 927, 931 (9th Cir. 1998); Johns v. County of San
13 Diego, 114 F.3d 874, 876 (9th Cir. 1997).

14
15 Finally, because Plaintiff has been transferred away from CMC,
16 Plaintiff's claims for injunctive and declaratory relief are moot.
17 See Alvarez v. Hill, 667 F.3d 1061, 1064 (9th Cir. 2012); Dilley v.
18 Gunn, 64 F.3d 1365, 1368 (9th Cir. 1995).

19 20 CONCLUSION AND ORDER

21
22 The First Amended Complaint is dismissed with leave to amend. If
23 Plaintiff still wishes to pursue this action, he is granted thirty
24 (30) days from the date of this Order within which to file a Second
25 Amended Complaint. While the Court does not necessarily deem
26 insufficient all of Plaintiff's allegations, the Court does require
27 that any Second Amended Complaint be complete in itself and not refer
28 in any manner to the prior Complaint. Plaintiff may not add

1 Defendants without leave of court. See Fed. R. Civ. P. 21. Failure
2 to file timely a Second Amended Complaint may result in the dismissal
3 of this action.

4
5 DATED: July 30, 2017.

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9 _____
10 ANDREW J. GUILFORD
11 UNITED STATES DISTRICT JUDGE

12 PRESENTED this 27th day of
13 June, 2017, by:

14 _____
15 /s/
16 CHARLES F. EICK
17 UNITED STATES MAGISTRATE JUDGE
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